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## South Africa Extradition Request: Shrien Dewani

Sally Ramage<sup>1</sup>

### Abstract

The United Kingdom Extradition Act 2003 and its faults was exposed in the application by the South African government to have a British citizen extradited to South Africa so that he can be charged and tried for the murder of his British wife whilst they were on a honeymoon holiday to Cape Town in South Africa in November 2010.

### Newly wed

Shrien Dewani and Anni Dewani were married a few weeks before their Cape Town holiday. They travelled to India for the Hindu marriage rites - a spectacular and extremely expensive event paid *gratis* by Anni Dewani's family. The couple were both well educated; good looking and from wealthy families. They enjoyed the best of everything and wanted for nothing. The groom Shrein Dewani is a fully qualified chartered accountant with a fabulous mortgage-free house in the City of Bristol from where he ran his successful business enterprises. Shortly before they were due to travel back home to the United Kingdom from a trip to South Africa, they were taxied to a restaurant to enjoy a dinner and on their way back, decided to take a glimpse at the hidden poverty in South Africa which rich tourists do not see or wish to be aware of. It was not a sensible decision and their taxi was hijacked and Shrien Dewani dumped a short distance away because it was his wife that the hijackers were interested in: she wore the expensive designer jewellery the thieves wanted.

At the core of this case is money and following the money, we see the clear motive of theft in of pounds already spent both by Anni's family and by Shrien's family, both families very

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seriously damaged in this dreadful case of tourism hijacking, murder, theft, perjury, politics and abuse of process.

### **Shrien Dewani- the personality**

Shrien Dewani is a millionaire businessman. He had not insured Anni Dewani's life with the prospect of killing her for an insurance payout; he most probably had bought her most of the designer jewellery she wore on that fateful night. She was a very beautiful and photogenic girl. They had discussed starting a family shortly. They both had everything to live for.

However, the South African police who investigated this murder soon arrested and charged three men for the murder of Anni Dewani. One cunning suspect implicated Mr Dewani, knowing that he would then receive a shorter prison sentence and the South African police clung to this confession and implication.

So, already burdened with sudden onset trauma of unexpectedly becoming a widower, Shrien Dewani faced extradition proceedings. He had to put up bail of a quarter of a million pounds. His and his wife's story was in every tabloid newspaper around the globe. His reputation was immediately severely damaged and he plunged in Post Traumatic Stress Disorder and deep depression and was admitted to a psychiatric hospital. Shrien Dewani called his property in Bristol, United Kingdom, *Prabhu Krupa Villa* and 'Prabhu Krupa' is Hindi for 'Sovereign Grace'.

### **Recap- criminal law**

One of the most difficult areas of Criminal law is that of *mens rea* and in considering which type of *mens rea* is applicable in a case, with the various objective and subjective tests which have been developed by the courts, especially in the area of murder (governed by common law).

## Intent must be proven

Intention is a *mens rea* required in murder. If it transpires that Shrien Dewani alone wanted to go for an after-dinner drive knowing that death was a virtually certain outcome of this drive and that Dewani was aware of this, then, yes, the jury would be right in thinking that he intended her death. However he was not the owner of the car nor was he the driver of the car which took them to that township. On the contrary, the driver of the car may have committed several serious road traffic offences which led to the probability of the hijacking.

## Warning of hijackers: official road traffic law



A sign in South Africa warning drivers. Source: Wiki. The sign has an exclamation mark in black

In the red road traffic warning sign and the words in capital letters, underneath the warning, state:

*'HI JACKING HOT SPOT'.*

This road traffic sign follows International Protocols adopted by most countries to varying degrees.

Warning road signs are an upwards-pointing red triangle and black pictogram describing the danger or obstruction. Road signs in South Africa follow the 1968 Vienna Convention on Road Signs and Signals concerning shape and function. A white background signifies the

sign is permanent, while a yellow background signifies that the sign is temporary.<sup>2</sup>

According to the 1968 Vienna Convention on Road Signs and Signals, the pictured warning sign of hijackers is the only such warning sign used (See 'Article 3: Obligation of the Contracting Parties'):

*'Where this Convention prescribes a sign, symbol or marking for signifying a certain rule or conveying certain information to road-users, the Contracting Parties undertake, subject to the time-limits specified in paragraphs 2 and 3 of this Article, not to use any other sign, symbol or marking for signifying that rule or conveying that information.'*

In the case of the murder of the British tourist to South Africa when the taxi she and her husband was hijacked, it is somewhat surprising that with the high rate of car hijacking in South Africa, this taxi vehicle was not equipped with anti-hijacking equipment, as many commercial vehicles are. An **anti-hijack system** is an electronic system fitted to motor vehicles to deter criminals from hijacking them. It may be that anti-hijacking equipment is not widely known about. An approved anti-hijacking system will achieve a safe, quick shutdown of the vehicle it is attached to.

### **Anti-hijacking technology: the micro-switch system**

The microswitch system is usually activated if one of the vehicle doors is opened and closed and the vehicle's engine is running. Once the system has been activated, the driver will have a set time limit to disarm it by entering a code before the vehicle takes measures.

If the system is not disarmed in the time window, it will warn the driver by sounding the vehicle's horn once every 10 seconds for 30 seconds, at which point the system will start sounding the horn at the immobiliser circuit will start rapidly pulsing for 40 seconds, completely disabling the engine and eventually bringing the vehicle to a stop. If the thief switches the ignition to the *off* position and back to the *on* position again, the horn will restart

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<sup>2</sup> South Africa also uses some local road signs unique to South Africa.

and operate constantly and the hazard lights will flash for 60 seconds. The immobiliser circuit will then close for 15 seconds and will rapidly pulse for 15 seconds before re-opening the circuit, allowing the vehicle to be driven to a safe location before once again being immobilised. The hazard lights will continue to flash, and on every subsequent attempt to start the vehicle will cause the horn to operate for 30 seconds, but the immobilizer circuit will not open, so the vehicle will not start and the hazard lights will keep flashing until the vehicle's battery is drained or the system is disarmed.

### **Anti-hijacking car alarm**

A second anti-hijacking vehicle system uses a **car alarm**, is an electronic device installed in a vehicle in an attempt to discourage theft of the vehicle itself, its contents, or both. Car alarms work by emitting high-volume sound (usually a siren, or pre-recorded verbal warning, the vehicle's own horn, or a combination ) when the conditions necessary for triggering are met, as well as by flashing some of the vehicle's lights, and (optionally) notifying another party via a paging system and interrupting various electrical circuits necessary for the car to start.

### **South Africa- murder, assault, rape and economic crimes**

The crime rate in South Africa is very high. South Africa's crime rate of murders, assaults, rapes (adult, child and infants), and other violent and economic crimes is high compared with most countries

### **Millions emigrate from South Africa to escape high crime rates**

Most emigrants from South Africa state that crime was a big factor in their decision to leave.<sup>3</sup> The South African Police Service is responsible for managing 1115 police stations across South Africa.

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<sup>3</sup>Murray Williams, ' South Africa's woes spark another exodus', *Independent Newspapers* , 6 October 2006,

See <http://www.iol.co.za/news/politics/sa-s-woes-spark-another-exodus-1.296516>, accessed 7 March 2014.

'The Economist magazine recently claimed that three to four times higher. *The Homecoming Revolution* is a organisation founded to encourage expatriate South Africans to return home. This organisation has given its opinion that, because of the high crime rates in South Africa, there may be 3 million South Africans who have

## **Criminal Hijacking in South Africa**

*Carjacking* is a significant problem in South Africa, where it is called *hijacking*. It is such a serious crime in South Africa that road traffic agencies in South Africa have erected standard warning signs about carjacking and there are incorporated in the Road Traffic Laws. These signs are road signs warning people in vehicles that certain areas are hotspots. There were 16,000 carjackings in 1998<sup>[3]</sup> (18 times the American rate per capita), and 60 murders a year resulting from carjacking. However the facts of this case reveal that husband and wife has just completed a safari excursion where they saw lions and tigers and other fierce animals which can endanger life. So they were in a controlled environment although taking a risk. He cannot be proved guilty of conspiracy to murder his wife unless he intended that he also would be murdered by the hijackers on that night.<sup>4</sup>

The driver of the Dewani's taxi, however, was not a licensed taxi driver with the Cape Town authorities. The car was not *fit for purpose* because it did not have anti-hijacking equipment as fitted in most taxis in an area where hijacking results in 60 murders every year.

Intent is used in the common sense of common law case development or defined through the process of the legislative grading of offences and legislative definitions of excuse, justification, and provocation are based on penal codes.

In this study of the murder of Anni Dewani in South Africa, it has been reported that the three South African suspects have been charged, tried and found guilty of Anni Dewani's murder.

## **South African post mortem**

A post-mortem examination revealed that Mrs Dewani was shot in the back of the neck and that she had suffered injuries to her chest. Nevertheless, the South African authorities requested that her husband, Mr Shrien Dewani, be extradited from England, United Kingdom to return to South Africa to face trial on a charge of conspiracy to murder his wife in South

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emigrated, legally or illegally, to settle in other countries, half of this number in the UK, even though official statistics showed that some 16 000 highly skilled South Africans had emigrated between 1994 and 2001.

<sup>4</sup> *R v Maloney* [1985] AC 905.

Africa because the South African investigating Police Officers chose to believe the statement of the criminal who implicated Shrien Dewani, husband of the beautiful Anni Dewani, having been promised leniency exchange for his 'confession'.

It is surprising that no second post mortem took place in Britain to certify the absolute truth of the South Africa Post Mortem Report.

### **Recklessly travelling into a South African ghetto?**

In England, one would be free to think that Anni Dewani's husband was not complicit with the murderers who killed her but that the South African government wants Shrien Dewani to be punished by way of a murder charge because he and his wife were reckless enough to venture out into the murderous, mean roads of the Gugulethu Township.

### **Culpability by pathological indifference to the social norms?**

Assessing mental culpability by the amorphous concept of recklessness on a continuum ranging from purposeful behaviour to negligence ignores more complex intrapsychic conflicts and also ignores how acts are embedded in social situations.

### **Motive**

Motives and stresses on individual personality are customarily considered only at the point of sentencing after conviction. The only time the defendant's motives are considered within the criminal justice system is when a defence of diminished responsibility allied to mental illness or insanity is used. However in the psychiatric approach, certain personality traits or developmental arrests are considered.

### **Acquisitive act- armed robbery of Anni Dewani's diamond and platinum bracelet and Giorgio Armani wrist-watch and £25,000.00 diamond ring**

Somebody stole Anni Dewani's diamond ring worth £25,000.00. It has never been recovered. One of the convicted men was found, after police searched his home, to have stolen Anni Dewani's designer wristwatch and diamond and platinum bracelet. The psychiatric

assessment also recognises an acquisitive act. This ‘theft with murder’ or ‘hijacking’ case is verified because one of the convicted men was found in possession of Anni Dewani’s platinum and diamond bracelet and the Giorgio Armani wrist-watch she was also wearing. However, Anni Dewani’s valuable £ 25,000 .00 diamond solitaire ring has not been recovered yet.

### **Psychaitric assessment of the British widower Mr Shrien Dewani**

In any type of psychiatric assessment, a key variable is the capacity of a person to act, or to be able to refrain from acting in certain ways. We saw that Shrein Dewani, faced with a barrage of reporters and photographers as he left the court one day, just sat down in the middle of the road and had to be led to a waiting car.

### **Anni Dewani’s murder: Timeline of events for Shrien Dewani**

Key dates in relation the murder of Anni Dewani, the new bride murdered while on honeymoon with her husband, Shrien, in South Africa:

<b>place</b>	<b>date</b>	<b>Event</b>
Cape Town, South Africa	12 Nov 2010	Kidnapped at gunpoint in Gugulethu, a township near Cape Town, at 23:00 local time, an area of the township of Khayelitsha. Zola Tonga, taxi owner, released onto roadside. Shortly after Mr Dewani released also. Qwabi drove the taxi and Mgnini shot dead Anni Dewani.
Lingeletu	14 Nov 2010	Police find the body of Mrs Dewani, 28, on the back seat of the car in Lingeletu West, with injuries to her head and chest.

Cape Town	16 Nov 2010	<b>Xolile Mngeni</b> , aged 28, is arrested, interviewed and he is charged with Mrs Dewani's murder.
Wynberg Regional Court	18 Nov 2010	Mngeni in court and charged with murder, robbery with aggravating circumstances and kidnapping, and is remanded in custody.
Cape Town	18 Nov 2010	Police arrest a second suspect.
Cape Town	20 Nov 2010	Police arrest a third man in connection with the murder.
London	21 Nov 2010	Funeral of Anni Dewani/Hindochoa
Cape Town	22 Nov 2010	Taxi driver, Zola Tonga, aged 31 and Qwabe, aged 28, charged with Anni Dewani's murder, robbery and kidnapping.
Bristol	24 Nov 2010	Shrien Dewani hospitalized with PTSD. Publicist Max Clifford is appointed.
Bristol	8 Dec 2010	Shrien Dewani arrested re extradition to South Africa.
London	10 Dec 2010	Dewani bailed -£250,000.00.
London	17 Dec 2010	South Africa Prosecutors lodge appeal against Dewani's bail.
Bristol	24 Feb 2011	Shrien Dewani allegedly overdosed on pills but his psychiatrist, Mr Paul Dedman, disagreed on

		suicide attempt.
Belmarsh	15 Mar 2011	Shrien Dewani's has bail extended at Belmarsh Magistrates' Court provided he admits himself to hospital in Bristol and agrees to be examined by a psychiatrist instructed by the government of South Africa.
London- City of Westminster Magistrates' Court	14 Apr 2011	Mr Dewani has been ordered out of Bristol's The Priory hospital following allegations he <b>threatened to punch a member of staff.</b>  The court hears that he was transferred to Cygnet Hospital Kewstoke, a low secure mental health hospital in North Somerset while awaiting an assessment and transferral to Bristol's Fromeside Clinic, a medium secure NHS hospital where he would be under supervision 24 hours a day.
Belmarsh Mag. Ct	3 May 2011	Extradition hearing. S. Africa prosecutor attended.
Belmarsh Mag Ct.	19 Jul 2011	Psychiatric expert gives evidence at extradition hearing.
London	10 Aug 2011	Judge's decision to extradite.
London	26 Sept	Home Sec signs extradition order.

	2011	
London	30 Sept 2011	Dewani's extradition appeal lodged.
London	30 Mar 2012	Extradition order temporarily halted.
Cape Town	8 Aug 2012	Qwebe convicted for murder- 25 years prison sentence.
Cape Town	19 Nov 2012	Mngeni convicted of murder. Life sentence.
Westminster Mag. Ct, London	24 Jul 2013	Decision to extradite despite being 'unfit to plead'.
London	22 Oct 2013	Application to appeal won by Dewani's Lawyer.
London	31 Jan 2014	Court rules Dewani to be extradited.
London	21 Feb 2014	Application to Supreme Court to rule on extradition.
London	3 Mar 2014	Supreme Ct application blocked. This triggers extradition within 28 days.

But, in refusing the application, Lord Thomas said:

*'The provisions of the Extradition Act are designed to ensure extradition is a speedy process. I therefore pronounce [that] any period that is applicable under the relevant legislation will run from today.'*

In January, 2014, the High Court ruled it would not be 'unjust and oppressive' to extradite Mr Dewani providing that assurances were received from South Africa about the length of time

he would be kept in the country *without trial*. Those assurances have been given. South African government assured the UK government that if he were still unfit to plead within 18 months, they will return him to the UK.

## Conclusion

It must be remembered that an extradition request by a foreign country for a British subject is not a trial for murder or whatever the crime is alleged to be. It is a request from another country, by reason of alleged founded evidence that the request is justified and that the person must be sent back to face trial.

It must be remembered that the three men convicted in South Africa of the murder of Anni Dewani have been found guilty but this does not in turn mean that Mr Dewani is an associate of these three men.

It must be noted that 60 persons are killed and robbed every year by hijackers, Apart from the words from these men there is no proof that Dewani had formed an alliance with the men.

On one occasion the taxi driver took him to exchange some currency.

It beggars belief that because Mr Dewani kept using the same taxi service that he was their co-conspirator.

It is the writer's argument that because Mrs Dewani wore a massive solitaire diamond ring and dressed well, that these men thought that this was an opportunity for easy pickings by way of a hijacking.

Finally, it must be noted that the media does not govern this country; it is the government with the help of the courts that keeps law and order and peace.

When the media offer up CCTV film footage, having paid massive amounts of 'sweeteners' for these.



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